

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Terves LLC,	)	
	)	Case No. <u>1:19-cv-1611</u>
Plaintiff,	)	
	)	JUDGE DONALD C. NUGENT
vs.	)	
	)	
Yueyang Aerospace New Materials Co.,	)	
Ltd.,	)	
	)	
and	)	
	)	
Ecometal Inc.,	)	
	)	
and	)	
	)	
Nick Yuan,	)	
	)	
Defendants.	)	

**DEFENDANTS ECOMETAL, INC. AND NICK YUAN’S  
RESPONSE TO TERVES’ SUPPLEMENT TO ITS PRELIMINARY INJUNCTION  
MOTION, OR, ALTERNATIVELY, TERVES’S RENEWED  
MOTION FOR PRELIMINARY INJUNCTION**

Defendants Ecometal, Inc. and Nick Yuan (collectively “the Ecometal Defendants”), submit this Response to Terves’s Motion to Supplement to its Preliminary Injunction, or Alternatively, Terves’s Renewed Motion for Preliminary Injunction (Dkt. No. 47).

**Background**

On May 1, 2020, Terves filed a motion for preliminary injunction for infringement of U.S. Patent No. 10,329,653. Dkt. No. 31.

On June 25, 2020, Terves and the Ecometal Defendants filed their respective opening claim construction briefing for disputed claim terms in Terves’s U.S. Patent Nos. 9,903,010 and 10,329,653. Dkt. Nos. 36 and 37.

On July 2, 2020, the Ecometal Defendants filed their opposition to Terves's PI Motion. Dkt. No. 40.

On July 24, 2020, Terves filed a second amended complaint adding claims of infringement under U.S. Patent No. 10,689,740. Dkt. No. 44. (The '740 Patent was officially issued to Terves on June 23, 2020. Dkt. No. 44-3.)

On August 5, 2020, Terves and the Ecometal Defendants filed their respective responsive claim construction briefs for the '010 and '653 Patents. Dkt. Nos. 45 and 46.

On August 7, 2020, Terves filed the present motion along with supplemental preliminary injunction arguments and a sealed affidavit of Dr. Lee Swanger analyzing the Ecometal Defendants purported infringement of the '740 Patent.

On August 7, 2020, the Ecometal Defendants timely filed their Second Amended Answer and Counterclaims. Dkt. No. 49. Terves's response to those Counterclaims is currently due August 28, 2020. These Counterclaims include newly asserted claims of inequitable conduct against the '010, '653 and '740 Patents, implicating the potential unenforceability of all three patents. As such, Terves's substantive answer to those counterclaims weighs heavily on the Ecometal Defendants' response to Terves' Motion for Preliminary Injunction.

#### **Response to Terves's Request for Supplemental Brief**

Subject to the discussion that follows, the Ecometal Defendants do not object to Terves's request to supplement its preliminary injunction motion nor to Terves's supplemental briefing and expert affidavit (already attached to Terves's Motion). However, in response to Terves's supplemental addition of a whole new patent to the PI Motion (and the case), the Ecometal Defendants request permission to file a supplemental opposition to address Terves's new

infringement claims under the '740 Patent (for which the Parties have not briefed, let alone even discussed any potential claim construction issues) and the Ecometal Defendants' new inequitable conduct claims as they apply to the '740 and '653 Patents, which would be asserted in Terves's Preliminary Injunction motion if the Court grants Terves's pending motion to supplement.

The timing for and length of the Ecometal Defendants' supplemental opposition depends on the nature of Terves's substantive response to the affirmative defenses and Counterclaims as well as the scope of any claim construction disputes between the Parties. Thus, the Ecometal Defendants request that the Court hold Terves's Supplemental and/or Renewed Motion for Preliminary Injunction in abeyance until the outstanding pleadings are substantively answered and the Parties discuss potential claim construction issues.

Accordingly, the Ecometal Defendants, ask that the Court order the Parties to submit a joint proposal for completion of the preliminary injunction briefing within seven days of Terves's filing of its substantive response to the allegations of the Counterclaim, such joint submission to include proposals on timing and length of the Ecometal Defendants' supplemental opposition and Terves's reply.

Dated: August 19, 2020

Respectfully submitted,

/s/ Evan W. Talley

Evan W. Talley, OK Bar # 22923

(admitted *pro hac vice*)

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***ATTORNEYS FOR DEFENDANTS  
NICK YUAN AND ECOMETAL INC.***

**CERTIFICATE OF SERVICE**

I certify that on August 18, 2020, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Matthew J. Cavanaugh  
David B. Cupar  
Andrew Gordon-Seifert

/s/ Evan W. Talley  
Evan W. Talley